Pacific Erectors, Inc. *and* **International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 29.** Case 36-CA-3159

June 8, 1981

DECISION AND ORDER

On April 11, 1978, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, Respondent and the Intervenor[1] filed exceptions and supporting briefs, and the Charging Party filed a brief in opposition to the exceptions by Respondent and the Intervenor.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to modify his remedy.[3] Chairman Fanning agrees that other possible jobsite locations are outside the scope of the complaint herein. Further, while the Chairman has previously indicated disagreement with the construction of Section 8(f) and related sections of the statute as applied herein,[4] he notes that in *N.L.R.B.* v. *Local 103, Iron Workers, supra*, the Supreme Court held that such a construction is a tenable one. Accordingly, he has decided to follow that position,[5] and therefore joins in adopting the Administrative Law Judge's recommended Order, as modified herein.[6]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Pacific Erectors, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Delete paragraph 2(a) and substitute the following:

"(a) Upon request, apply to the Tualatin jobsite the terms and conditions of the 1977-80 Master Labor Agreement to the extent consistent with the short-form memorandum agreement. The appropriate unit is:

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[1] Sheet Metal Workers International Association Local 16.

[2] We agree with the Administrative Law Judge that Respondent violated Sec. 8(a)(5) of the Act when it unilaterally abrogated its agreement with the Union at a time when the majority of the unit employees at the Tualatin jobsite were union members. The Board has held that an employer is not free to repudiate an 8(f) agreement where, as here, a majority of the unit employees supported the union at the time of repudiation. See, generally, *N.L.R.B.* v. *Local Union No. 103, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, et al. [Higdon Contracting Company]*, 434 U.S. 355 (1978).

In his Decision, the Administrative Law Judge stated that Respondent should have resolved the dispute concerning its dissatisfaction with the quality of employees referred through the hiring hall "within the confines of the existing contract," rather than proceeding to execute a contract with the Sheet Metal Workers. Respondent points out that the Ironworkers contract was a short-form agreement. This fact, however, does not detract from the Administrative Law Judge's proper conclusion that Respondent was required to abide by the Ironworkers' contract. Nor is this fact necessarily inconsistent with the Administrative Law Judge's conclusion that Respondent should have sought to resolve its disputes "within the confines of the existing contract." On the contrary, we interpret the Administrative Law Judge's remark in this respect as a proper statement that Respondent, particularly in view of the contract, was required to work with the Ironworkers toward a mutually acceptable solution to the problems of concern to both of them. We do not construe that remark as a factual statement that the contract contained a grievance mechanism. Indeed, the Administrative Law Judge prefaced his remark in this respect by noting that the parties' contract specifically excluded the master agreement's grievance and arbitration provisions.

In sec. III of his Decision, the Administrative Law Judge inadvertently refers to November 22, 1977, as the date Respondent commenced following the terms and conditions of the then current master labor agreement. However, the date should be November 22, 1974—the date Respondent executed the short-form compliance agreement. The Decision is hereby corrected to show November 22, 1974.

Finally, Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] Respondent and the Intervenor have excepted to that portion of the Administrative Law Judge's remedy making eligible for backpay the three employees who were discharged by Respondent and the seven employees who walked off the jobsite in apparent protest of those discharges. We agree with Respondent and the Intervenor that backpay should not be awarded to these employees. However, we do so for reasons apart from those asserted by Respondent and the Intervenor. In our judgment, it appears that the seven employees engaged in an economic strike in support of the discharged employees, rather than voluntarily terminated their employment as contended by Respondent and Intervenor. As there appears to be no evidence that the seven strikers unconditionally requested reinstatement and as there has been no allegation or finding that the separation of any of the 10 employees from Respondent's employ resulted from any unfair labor practice, we find that Respondent is not obligated to furnish backpay to these employees.

[4] See his position set forth in dissenting or concurring opinions in *R. J. Smith Construction Co., Inc.*, 191 NLRB 693 (1971); *Ruttman Construction Company, and Ruttman Corporation, Joint Employers*, 191 NLRB 701 (1971); *Dee Cee Floor Covering, Inc. and its Alter Ego and/or Successor, Dagin-Akrab Floor Covering, Inc.*, 232 NLRB 421 (1977).

[5] See the Chairman's concurring opinion in *D'Angelo & Khan, Inc.*, 248 NLRB 396 (1980). The Chairman notes, however, that the language of the *Iron Workers* decision suggests that a different statutory construction is also tenable and within the Board's competence.

[6] In his Decision, the Administrative Law Judge noted that Respondent signed a short-form compliance agreement which adopted in pertinent part the terms of the 1974-77 Master Labor Agreement (MLA) executed between the Oregon-Columbia Chapter, Associated General Contractors of America, Inc., *et al.*, and the Union. The Administrative Law Judge further noted that a successor MLA had been executed effective July 1, 1977, to June 30, 1980. This latter agreement is the one which Respondent is currently bound and required to apply at the Tualatin jobsite. See *Ted Hicks and Associates, Inc.*, 232 NLRB 712 (1977); *New York Typographical Union No. 6 (Clark & Fritts, Inc.)*, 236 NLRB 317 (1978); *Phoenix Air Conditioning, Inc.*, 231 NLRB 341 (1977). However, since the short-form compliance agreement by its terms adopts only certain terms and conditions of the current MLA, we shall modify the Administrative Law Judge's recommended Order to provide that Respondent adhere to the terms and conditions of the 1977-80 MLA only to the extent consistent with the short-form memorandum agreement, and that it apply those terms and conditions only to the Tualatin jobsite—the appropriate unit herein.

All employees of the Employer engaged in construction work at the Sports Complex (Tualatin) jobsite in Beaverton, Oregon, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to recognize and bargain with, or honor any labor agreement reached with, International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 29, as the exclusive representative of our employees in an appropriate unit, concerning rates of pay, wages, hours of employment, and other conditions of employment, at any time when that labor organization is entitled to recognition at any of our construction projects.

WE WILL NOT assist or give support to Sheet Metal Workers International Association Local 16 by recognizing or entering into or enforcing collective-bargaining agreements with that labor organization as the exclusive representative of employees on any of our projects, when International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 29, or any other labor organization, is the lawfully recognized bargaining representative of such employees or holds a valid collective-bargaining agreement covering such employees; or by otherwise recognizing the above-mentioned Sheet Metal Workers International Association Local 16 when such Union is not entitled to recognition under the Act.

WE WILL, upon request, apply to the Tualatin jobsite the terms and conditions of the 1977-80 Master Labor Agreement to the extent consistent with the short-form memorandum agreement. The appropriate unit is:

All employees of the Employer engaged in construction work at the Sports Complex (Tualatin) jobsite in Beaverton, Oregon, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by the Act.

PACIFIC ERECTORS, INC.

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This matter was heard in Portland, Oregon, on February 23, 1978.[1] The complaint, issued November 30, is based on a charge filed August 26 by International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 29. The complaint alleges that Pacific Erectors, Inc. (Respondent), violated Section 8(a)(5), (2), and (1) of the National Labor Relations Act (Act).

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, Respondent, Charging Party, and Intervenor.[2]

Upon the entire record, and from my observation of the witnesses and their demeanor, I make the following:

[1] All dates hereinafter are within 1977, unless stated to be otherwise.

[2] Sheet Metal Workers International Association Local 16 (Sheet Metal Workers) intervened at the hearing, upon motion of its counsel, without objection, granted by the Administrative Law Judge. At the hearing, Respondent amended its answer to deny, rather than to admit, the allegations of par. 5 of the complaint relating to the appropriate unit.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and at all times material herein has been, an Oregon corporation with an office and place of business in Portland, Oregon, where it is engaged in the construction industry as a roofing contractor. During the past 12 months, which period is representative of all times material herein, Respondent performed services valued in excess of $50,000 for employers and contractors who are engaged in interstate commerce.

I find that Respondent is, and at all times material herein has been, an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 29, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*[3]

Respondent is a corporation that has been in business since November 1974. Richard Abrams (Abrams) is the corporate secretary and one of the stockholders, and his wife is the corporate president. Abrams is the general manager of the business, and visits the jobsites each day. He has been a member of the Union for many years, and is thoroughly familiar with the trade.

Respondent has had a collective-bargaining agreement with the Union since November 22, 1974. The agreement is a "short form" type, which adopts by reference, a master agreement between the Oregon-Columbia Chapter, Associated General Contractors of America, Inc., and certain other employer groups, and the Union, effective 7-1-74 through 6-30-77. The master agreement provides, *inter alia*, for a method of termination. The former master agreement was followed by a similar agreement effective 7-1-77 through 6-30-80. Neither the master agreement nor the short-form agreement was terminated at any time by either party involved herein.

Since November 22, 1977, Respondent has followed the terms and conditions of the aforesaid short-form and master agreements, and has employed only union members on all its jobs. Respondent did not contract with, or employ any members of, the Sheet Metal Workers at any time prior to August 18, 1977.

Respondent's principal business is the installation of sheet metal roofs, but it also installs sheet metal siding on buildings. On June 1, 1977, Respondent commenced installation of sheet metal roof on a tennis court building within a sports complex in Tualatin, Oregon. The roof primarily consisted of a bottom layer of sheet metal upon which was laid a pad of insulation material affixed in place by subgirts, with a top layer of sheet metal then affixed to the building.[4] Respondent's initial crew consisted entirely of ironworkers transferred from another of Respondent's jobs. Thereafter, until August 18, all of Respondent's employees[5] on the tennis court job were ironworkers.

Because of very hot weather during the summer, an agreement was reached between Respondent and its employees on the tennis court job, whereby the employees worked from 6 a.m. to 2:30 p.m., with a half hour for lunch and no overtime payment. By the end of the workday on August 17, insulation had been laid on the bottom sheet metal, but it had not been tied down with subgirts. During the evening or night of August 17 a wind came up, and blew the insulation to the ground. When Abrams came to the site on August 18 he saw what had happened, and laid off three employees. The remaining employees refused to work because of what they thought was an injustice to the three who were laid off. During an interval[6] when neither the job foreman nor Abrams was with the employees, they installed the insulation and subgirts. Respondent's work on the building then was approximately 40 percent complete. Abrams paid the employees off, and telephoned a representative of the Sheet Metal Workers, which union for some time had been trying to obtain work for its employees, with Respondent. After their conversation, Abrams went to see the Sheet Metal Workers representative, and the two of them executed a collective-bargaining agreement on that same day, August 18. Leroy Worley (Worley), the Union's financial secretary-treasurer and business representative, heard from employees about the incident at the tennis court, and about the Sheet Metal Workers agreement with Respondent, and on August 19 he talked with Abrams on the telephone, to protest Respondent's actions. The situation was left unchanged, and Worley then called a representative of the Sheet Metal Workers, who verified that an agreement had been signed with Respondent.

Since August 18 Respondent has not requested any employees from the Union. In September, four ironworker employees were used by Respondent, and, thereafter, only one such employee, a supervisor, was used. Otherwise, all Respondent's employees since August 18 have been sheetmetal workers.

B. *Contentions of the Parties*

The General Counsel contends that Respondent's collective-bargaining agreement with the Union covers all Respondent's employees at the Tualatin jobsite, that Respondent has not repudiated the agreement, that the Sheet Metal Workers agreement is not a prehire contract, and that Respondent's execution of an agreement with the Sheet Metal Workers violated Section 8(a)(5) and (2) of the Act.

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[3] Most facts essential to resolution of the issues are not in dispute. This background summary is based on uncontradicted and credited testimony of witnesses for the General Counsel and Respondent.

[4] A separate contract for the siding was awarded to another company.

[5] At one time Respondent had a nonunion supervisor on the job for a limited period of time.

[6] There is a conflict in testimony relative to the cause of this interval. Yeager's testimony that it occurred when the foreman, at the employees' request, went to see Abrams about writing the remaining employees up as layoffs, rather than quits, in order that they could obtain unemployment insurance, is credited.

Respondent contends that the Union's employees were unable or unwilling to perform work at the Tualatin jobsite and that the Union refused to accept Respondent's offer to use a composite crew on the Tualatin job, thereby justifying the Sheet Metal Workers contract.

C. *Discussion*

The fact that Respondent has not repudiated its agreement with the Union is shown by Respondent's hire of ironworker employees for jobs other than the one involved herein, after August 18. Further, Respondent continues at the present, to employ an ironworker supervisor and to make payments on his behalf to the Union's trust funds.

The fact that the Union had majority status on the Tualatin jobsite at all times until August 18 is shown by the record evidence, and is not in issue.

It is not entirely clear that the parties intended that the Ironworkers contract would be a prehire agreement, but actions of the parties after they signed the agreement and exclusion in the short-form agreement of the basic contract's provisions for settling grievances indicate that the contract, in its effect, was a prehire agreement. It is found that the contract was for prehire purposes, within the purview of Section 8(f) of the Act, and that the Ironworkers had majority status on all jobs performed by Respondent from date of the contract until August 18, 1977. The question then is presented as to whether or not Respondent breached its agreement on August 18.

The fact is not disputed, that Respondent executed an agreement with the Sheet Metal Workers on August 18, without first attempting to obtain an alternate crew from the Ironworkers. The merits of the dispute on August 18 are not in issue and were not fully litigated, but it appears that Respondent's termination of the work crew that day possibly was not justified. However, a finding on that point is not necessary, and is not made. The matter is important only to the extent that it is raised in argument by Respondent and the Intervenor, with the contention that the crew abandoned the work, or quit their jobs. It is argued that such abandonment, or quits, justified Respondent's execution of an agreement with the Sheet Metal Workers. That argument is not accepted. The dispute at the worksite was between Respondent and its employees. The basic contract then existing between Respondent and the Union had provisions relating to settlement of disputes, but the short-form agreement states that such provisions are not binding upon the parties. That, however, is of no weight in determining whether or not Respondent breached the agreement without legal cause. It is clear that a dispute arose on August 18, resulting in the discharge of three Ironworkers employees. The remainder of the Ironworkers employees then asked for reinstatement of the three dischargees, or, in the alternative, for a layoff of themselves. However, Abrams did not treat the matter as a dispute between Respondent and the employees. Rather than attempt to resolve the problem through the Union, Abrams immediately sought out the Sheet Metal Workers and signed a contract with them.

Respondent now attempts to separate the rights and duties of the employees from those of the Union, and such cannot, as a legal matter, be done. The employees and the Union were entitled to orderly resolution of the work dispute within the confines of the existing contract.[7]

Respondent extends its argument, by contending that, for several years, there has been argument in the industry as to whether installation of metal roofing and siding is work to be assigned to Ironworkers, or to Sheet Metal Workers. Respondent argues that the Union was notified on August 19, after the Sheet Metal Workers agreement was signed, that it was willing to use Ironworkers on the job, as composite crews with Sheet Metal Workers. This argument is not pursuasive. Assuming the existence of a jurisdictional dispute generally known in the industry, such a dispute cannot be settled in the arbitrary manner herein exhibited by Respondent. Its existing, valid contract already had settled the matter, at least so far as the Tualatin job was concerned. Further, the offer to use composite crews is a weak reed, since Respondent contends that it has been dissatisfied with the work of Ironworkers employees for a long period of time. Respondent now contends, on the one hand, that Ironworkers are unsatisfactory, yet on the other hand, that it will accept them, provided Sheet Metal Workers also are on the job.

The Sheet Metal Workers contract cannot be considered as a prehire contract for the Tualatin job since the job was approximately 35 percent or 40 percent complete when the agreement was signed on August 18. At the time the Sheet Metal Workers contract was signed, there were no Sheet Metal Workers on the job, thus the Sheet Metal Workers did not then enjoy majority status. That status was created later, through the illegal actions of Respondent.

Respondent primarily is engaged in the construction industry, and the Ironworkers are construction employees. As discussed above, Respondent's contract with the Union appears to be a prehire agreement, but whether it is or not, it was a valid, existing contract as of August 18. If it is considered to be a prehire agreement, it ripened into a fully enforceable agreement at the outset of the Tualatin job, when only Ironworkers employees were hired.[8] The majority held by the Ironworkers at the time is not challenged. If it is not considered to be a prehire agreement, it is clear that the contract was honored and accepted by Respondent at all times prior to August 18, and thus was fully enforceable. In either case, Respondent's actions in breaching the contract without

[7] Respondent also contends that some Ironworkers employees were not satisfactory, and that Respondent was not successful in obtaining resolution of employee problems through the Union's representatives. That contention primarily is based on the general and conclusionary testimony of Abrams, who is not credited. Abrams' testimony is contrary to the testimony of Worley, who is credited. However, assuming, *arguendo*, that some of the Union's employees and its representatives were not satisfactory from Respondent's point of view, that fact would not justify Respondent's unilateral and precipitous breach of its contract with the Union.

[8] *Ruttmann Construction, Company, and Ruttmann, Corporation, Joint Employers*, 191 NLRB 701 (1971).

prior notice to, or bargaining with, the Union constituted a violation of Section 8(a)(5) and (1) of the Act.[9]

The agreement Respondent signed with the Sheet Metal Workers covered the same work, at the same site, then within the existing agreement between Respondent and the Ironworkers. The result was a change of work force, and a change of bargaining representative for that work force, without bargaining with, and over the protest of, the Ironworkers. The contract was solicited, entered into, and signed by and at the request of Abrams. Such action assisted and gave support to the Sheet Metal Workers in violation of Section 8(a)(2) and (1) of the Act.[10]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Pursuant to Section 10(c) of the Act, as amended, it is recommended that Respondent be ordered to cease and desist from engaging in the unfair labor practices found, and to take certain affirmative action designed to effectuate the policies of the Act.

The complaint alleges, and it is found, that the appropriate unit involved herein is:

> All employees of the Employer engaged in construction work at the Sports Complex jobsite in Beaverton, Oregon excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The complaint also alleges representation status of the Union on the basis of Section 8(f) of the contract. The General Counsel presented and argued the case on the basis of the Tualatin job alone, and seeks in his brief backpay for employees at only the Tualatin job. The remedy herein, thus, will be limited to the Tualatin jobsite.

It has been found that Respondent unlawfully withdrew recognition from the Union as the exclusive bargaining representative of employees on the Tualatin sports complex job, and refused to honor its bargaining contract with the Union, which was effective at all times relative to said job. It also has been found that Respondent unlawfully assisted the Sheet Metal Workers by recognizing it as the exclusive representative of employees on the Tualatin job. As discussed *supra*, the dispute at the worksite on August 18 was not fully litigated. Further, the complaint contains no 8(a)(1) or (3) allegations. Thus, there is no issue relative to reinstatements. However, the Ironworkers contract should have been applied until the end of the Tualatin job, which would have required dispatch to the job of employees then on the Ironworkers out-of-work list, when job opportunities were available. Those opportunities, however, were given to Sheet Metal Workers. Therefore, it is recommended that Respondent be ordered to pay backpay to all such out-of-work Ironworkers employees who were supplanted by Sheet Metal employees on the Tualatin job for the period of that job, between August 19 and the date each such Ironworkers employee was dispatched to another job, less any interim earnings.

It is further recommended that the Sheet Metal Workers contract be declared null and void, and that the Ironworkers contract be applied to all construction projects performed or to be performed by Respondent during the effective period of the aforesaid Ironworkers contract, unless and until a valid bargaining agreement is entered into with another labor organization covering Respondent's employees.

As requested by the General Counsel, it is not recommended that any backpay be awarded for any job other than the Tualatin job discussed herein.

CONCLUSIONS OF LAW

1. Respondent, Pacific Erectors, Inc., is an employer primarily engaged in the construction industry, and in commerce within the meaning of Sections 2(6) and (7) and 8(f) of the Act.

2. International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 29, and Sheet Metal Workers International Association Local 16 are labor organizations within the meaning of Sections 2(5) and 8(f) of the Act.

3. The following unit is, and at all times material herein has been, an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Employer engaged in construction work at the Sports Complex jobsite in Beaverton (Tualatin), Oregon excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. At all times material herein, a majority of the employees in the bargaining unit described above in paragraph 5 have been represented by the Union for the purpose of collective bargaining and, by virtue of Sections 8(f) and 9(a) of the Act, the Union has been, and now is, the exclusive representative of all employees in said unit for the purpose of collective bargaining with respect to rates of pay, hours of employment, and other terms and conditions of employment.

5. By withdrawing recognition from the Ironworkers as the exclusive representative of the employees in the aforesaid appropriate unit, and by breaching its collective-bargaining agreement with the Ironworkers and refusing to honor the conditions of employment therein provided before the completion of the Tualatin project without consulting and bargaining with the Ironworkers,

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[9] *Davis Industries, Inc.; Stag Construction, Inc.; and Add Miles, Inc.*, 232 NLRB 946 (1977); *Mountain States Construction Company, Inc.*, 207 NLRB 139 (1973).

[10] *Davis Industries, Inc., supra; Mountain States Construction Co., Inc., supra.*

Respondent engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

6. By recognizing the Sheet Metal Workers as exclusive representative of the Tualatin job employees, by including those employees in an agreement entered into with the Sheet Metal Workers, and by enforcing said agreement with respect to the Tualatin job employees, all events occurring while Respondent was engaged in work at Tualatin and while the Ironworkers were the exclusive bargaining representative of such employees pursuant to a valid collective-bargaining contract, Respondent engaged in unfair labor practices in violation of Section 8(a)(2) and (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, as amended, I hereby issue the following recommended:

ORDER[11]

The Respondent, Pacific Erectors, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain with, or honor any labor agreement reached with, International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 29, as the exclusive representative of employees in an appropriate unit, concerning rates of pay, wages, hours of employment, and other conditions of employment, at any time when that labor organization is entitled to recognition on any of Respondent's construction projects.

(b) Assisting or giving support to Sheet Metal Workers International Association Local 16, by recognizing, or entering into or enforcing collective-bargaining agreements with, that labor organization as the exclusive representative of employees on any of Respondents' projects when the above-mentioned Ironworkers or any other labor organization is the lawfully designated bargaining representative of such employees or holds a valid collective-bargaining agreement covering such employees; or by otherwise recognizing or contracting with the abovementioned Sheet Metal Workers when such union is not entitled to recognition under the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by the Act.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Make whole all Ironworkers employees for any loss of earnings they may have suffered by reason of the discrimination against them, as set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in analyzing the amount of backpay due under the terms of this recommended Order.

(c) Post at its offices in Portland, Oregon, the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's authorized representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."